IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Raja Gopal Singh vs. Military Estate Officer & Ors.

S.B.Civil Misc.Appeal No.341/1993 against the order dated 15.9.1992 passed by the learned Civil Judge, Jodhpur in Land Acquisition Reference No.10/80/

Date of Judgment: September 01, 2006.

PRESENT.
HON'BLE MR. PRAKASH TATIA, J.

Mr. B.C. Mehta for the appellant.
Mr. V.K. Mathur for the respondent.

BY THE COURT:

Brief facts of the case are that notification for acquisition of the land in dispute along with other land was issued on 23.3.1977. It is submitted by the appellant that the appellant was given notice by the land acquisition officer because the appellant was owner of the property in dispute, however, the appellant could not produce the sale-deed of the land in question because the sale-deed was executed in favour of the appellant for the land in dispute in the year 1956 and at that time, the appellant was student and he was not knowing where the sale-deed was lying. Because of this fact, the land acquisition officer held that the appellant failed to prove the title to the property and did not award any compensation to the appellant. There were other claimants also for

other lands. Those persons also failed to produce their title deeds before the land acquisition officer. Their claims were also rejected by the land acquisition officer. However, the appellant as well as other land owners submitted separate applications under Section 18 of the Land Acquisition Act for making the reference before the civil court. In the civil court, the other land owners produced their title deeds for their lands but the appellant, despite efforts, could not find out even the particulars of the sale-deed, therefore, could not produce the sale-deed. Not only this but while preferring appeal against the rejection of the reference of the appellant by the civil court, the appellant despite efforts, could not lay hands upon the copy of the sale-deed or its particulars. Ultimately, the appellant found out the particulars of the sale-deed on 27.9.2004 and obtained the copy of the sale-deed from the Registry Department on 5.10.2004 and immediately submitted application under Order 41 Rule 27,C.P.C. before this Court on 11.10.2004.

The appellant submitted that the appellant is owner of the property, which is apparent and clear from the sale-deed, which was executed on 1.4.1956 and which is registered document and, therefore, he may be permitted to produce additional evidence at the appellate stage. It is also submitted that the sale-deed in favour of the appellant is registered one and old, more than 30 years, therefore, the court can

take presumption about the due execution of the document under Section 90 of the Evidence Act. Otherwise also in the land acquisition matter, even production of certified copy of the sale-deed itself is sufficient to prove the title. The learned counsel for the appellant also submitted that there is no dispute with respect to the genuineness of the document and in view of the fact that the respondent-Union of India is not claiming title over the property which is obviously because of the fact that the Union of India sought acquisition of the land. It is also submitted that according to the appellant, the compensation amount has not been paid to any body by the Union of India for the land in question. It is also submitted that in reply to the application of the appellant under Order 41 Rule 27, C.P.C., the respondent clearly admitted that possession of the land was taken from private person and not from the State government. In view of the above, the appellant was entitled to and is entitled to compensation with all benefits which are permissible under the Land Acquisition Act, as amended time to time.

The learned counsel for the respondent-Union of India Mr. Mathur vehemently submitted that the application has been filed after delay and it cannot be presumed that the appellant was not knowing about his own sale-deed nor he was knowing the particulars of the sale-deed. Be it as it may be, the fact is that the respondent-Union of India took possession of the land and according to the learned counsel for the

respondent, the compensation amount has been paid by the Union of India to the State Government for the land in question, therefore, in case there is any grievance of the appellant, then he should seek relief against the State Government and if can legally recover the amount from the State Government, he may recover.

I considered the submissions of the learned counsel for the parties and perused the reasons given in the application supported by the affidavit and the reply.

It is true that the appellant did not produce the sale-deed of the land in question for a long period but from copy of the sale-deed which has been produced by the appellant with application moved under Order 41 Rule 27, C.P.C., it reveals that this document is registered on 1.4.1956 and 50 years have passed. There is clear mention of the name of the appellant in the sale-deed, therefore, prima facie it appears that the land mentioned in the sale-deed was purchased by the appellant. It is true that presumption can be drawn with respect to the due execution of the sale-deed but so far as other questions, which may arise, are with respect to the identity of the property etc., are required to be investigated and, therefore, looking to the fact that it is a question of title of the appellant and in case the application is dismissed, the appellant will be deprived of his entire property as the land has been acquired, therefore, despite the fact that the appellant

did not produce the sale-deed earlier, this Court is of the view that in such a matter, a liberal approach is required to be taken.

In view of the above, the application filed by the appellant under Order 41 Rule 27, C.P.C. deserves to be allowed and hence allowed. The copy of the sale-deed produced by the appellant along with the application is taken on record.

Since the right of the appellant is dependent upon the sale-deed and for that the respondents are required to be given opportunity to rebut the evidence of the appellant, therefore, the order of the civil court dated 15.9.1992 deserves to be set aside so that both the parties may lead evidence to prove and rebut the title of the land in question.

The learned counsel for the respondent also submitted that not only the compensation was paid for the land in question but when the appellant failed to produce the sale-deed, according to their information, the compensation for the land in question has been paid to Raja Narpat Singh by civil court on 16.11.1981 in case LAR No.7/82 to 8/80.

Since this issue was raised for the first time by the respondent, in reply to the application under Order 41 Rule 27,C.P.C., therefore, there is no need to examine this aspect of the matter and since the order of the reference court is under challenge as appeal has been preferred by the appellant, the appropriate order which can be passed by the

reference court on the basis of the evidence about the title of the land. The reference court will be free to pass appropriate order.

Therefore, the application of the appellant under Order 41 Rule 27, C.P.C. is allowed and consequently, the order dated 15.9.1992 passed by the civil court is set aside. The reference application is remanded to the trial court for deciding the reference application in accordance with law after giving permission to both the parties to lead evidence with respect to the title of the property involved in this case. The respondents will be free to produce documentary evidence also to meet with the sale-deed produced by the appellant. The court below is requested to decide the reference application within a period of three months from the date of receipt of the copy of this order. The registry is directed to send the copy of this order along with record forthwith.

The appeal is,therefore, disposed of as indicated above.

(PRAKASH TATIA),J.

mlt.